IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

SATURDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.4681 of 2000

Between:

M.LINGAIAH S/o. Ramaiah
R/o. Deepakunta Village, Kanchanpally Post,
Nalgonda District.

..... PETITIONER

AND

1 The Hon'ble Labour Court-III, Rep. by its Presiding Officer
Chandravihar Complex, Nampally,
Hyderabad.
2 The A.P.S.R.T.C., Rep. by its Depot Manager
Nalgonda Bus Depot, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the respondents and issue an appropriate Writ, order or Direction more particularly one in the nature of WRIT OF CERTIORARI and quash the Award Passed in ID.No.63 of 1994 dated 17-11-97 published 0n 5-1-98 vide G.O.Rt.No.3285 dated 19-12-97 in sofar as not granting the continuity of service, backwages, attendant benefits and other service benefits as perverse, illegal, contrary to law, erroneous and also in violation of Article 14 and 21 of the Constitution of India and grant all consequential benefits in the interest of justice and pass such other or further order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case.

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ORAL ORDER:

This Writ Petition is filed by the workman being aggrieved by the Award dated 17-11-1997 in I.D.No.63 of 1994 on the file of Labour Court-III, Hyderabad insofar as not granting the relief of continuity of service, back wages, attendant benefits while granting the relief of fresh appointment, is concerned.

It is the case of the petitioner that he was appointed as a Conductor in the respondent-Corporation in the year 1987 and he has been discharging duties to the satisfaction of one and all without any blame. While so, he was issued with a charge sheet dated 15-1-1993 alleging that he had absented from duty unauthorizedly from 19-11-1992 to 15-1-1993 without any prior permission or sanction of leave. However, he did not submit his explanation or participated in the enquiry conducted thereafter. Therefore, *ex parte* enquiry was conducted and he was issued with a show cause notice of removal for which he did not submit any explanation. After receiving the explanation, final orders were passed on 15-4-1993 by the disciplinary authority removing him from service. Aggrieved by the same, he raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') and the same was taken on file as I.D.No.63 of 1994 on the file of Labour Court-III, Hyderabad. Before the Labour Court, though no oral evidence was adduced on either side, on his behalf Exs.W1 to W3 were marked and on behalf of the Management, Exs.M1 to M12 were marked. After appreciation of the entire material placed before it, the Labour Court found that the charges are proved, but the order of removal is disproportionate to that of the misconduct and, therefore, passed the Award as noted above.

A detailed counter affidavit has been filed on behalf of the 2nd respondent denying the allegations made by the petitioner and asserting *inter alia* that the petitioner absented from duties without prior permission or intimation. If the petitioner was really sick, he could have, at least, presented a leave letter and sick certificates in person. Further, there is an RTC Dispensary and Hospital at Nalgonda, but the petitioner did not report at that hospital for treatment etc. In fact, the Labour Court itself had taken a lenient view of the matter and granted the relief of fresh appointment, which is just and proper and does not call for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the

learned counsel on either side and gone through the entire material made available on record including the impugned Award.

For the absence of duty from 19-11-1992 to 15-1-1993, the petitioner submitted an explanation stating that he fell seriously ill and, therefore, applied for leave from 12-11-1992. However, he did not recover from illness. He was directed to undergo treatment under a Specialized Doctor. Therefore, he had been sending leave applications, from time to time, duly enclosing the Medical Certificates to the 2nd respondent. However, without considering all these things, a charge sheet was issued. The Labour Court found that though the charges are proved as to the absence of the petitioner, but felt that the order of removal was not justified, since it is a harsh and disproportionate punishment to that of the misconduct proved. The Labour Court has also taken into consideration, the clean record maintained by the petitioner. It is stated that it is not the case of the respondent-Corporation that the petitioner had any other punishment suffered earlier. Having regard to the facts and circumstances of the case, I am of the opinion that this is a case of absenteeism and the past conduct of the petitioner was fairly good and in view of this, the petitioner could have been even awarded the relief of continuity of service, though not back wages and other attendant benefits. The Labour Court has not properly exercised its powers vested under Section 11-A of the Act in granting the relief to the petitioner. The Labour Court while holding that the punishment was disproportionate and not justified and also having noted that the past record of the petitioner was clean, could not have declined to grant the relief of continuity of service.

In the result, the Award passed by the Labour Court is liable to be modified and accordingly modified to read as under:

> "the removal order passed by the management is set aside. It is directed to reinstate the petitioner with continuity of service, but without any back wages and without any attendant benefits."

With the above modification, the Writ Petition is disposed of. No order as to costs.

20-8-2005

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